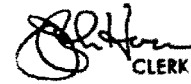


FILED

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CLERK

IN UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

JEFF BALLARD,

Plaintiff,

vs.

BRIGHT HORIZONS FAMILY SOLUTIONS
PREFERRED PROVIDER ORGANIZATION,

Defendant.

COURT FILE NO. C1V12-4205

COMPLAINT

COMES NOW the Plaintiff by and through his attorney, Nasser Law Offices, P.C., and for his Cause of Action and his Jurisdictional Allegations, complains and alleges as follows:

1. That this action arises under the EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974 [29 U.S.C. §1001, *et seq.*] (ERISA) and, more particularly, §502(a)(1)(B) of said Act [29 U.S.C. §1132(a)(1)(B)]. The Court has jurisdiction of this matter under 29 U.S.C.

§1132(e);

2. That the Plaintiff is a qualified Participant in Bright Horizons Family Solutions Preferred Provider Organization (hereinafter “Defendant Plan”), which Plan is believed to be qualified under and governed under ERISA;

3. That at all times pertinent, Plaintiff was a qualified Participant in the Defendant Plan entitled to receive health care benefits;

4. That Defendant Plan has denied Plaintiff his ERISA benefits which are due under said Plan, and Plaintiff has exhausted all Administrative remedies;

5. That Plaintiff suffers from a cervical injury which produces constant severe chronic disabling pain; further, that Plaintiff's primary care physician and his primary pain care physician have prescribed pulsed radio frequency therapy (PRFT); further, that PRFT is not available in-network; further, that the nearest PRFT provider is William Cohen, MD, of American Pain Relief Institute, Yankton, South Dakota, an out-of-network provider;

6. That Plaintiff's primary care providers have referred him to Dr. Cohen for PRFT;

7. That the Defendant Plan, as quoted in the Administrative Appeal Decision, apparently provides out-of-network coverage under the following pertinent condition:

- a **Non-Preferred Care Provider** on the referral of the person's **Primary Care Physician** and if approved by Aetna;

8. That throughout the Administrative Appeal, Aetna [the Third Party Claims Administrator (hereinafter "Aetna")] declined to "approve" the procedure because:

... The basis for this determination is that your plan does not have coverage of services from out-of-network (nonparticipating) providers except in emergency situations. Participating (contracted) providers have been identified that perform the requested services.

Therefore, we are upholding our previous determination to deny participating benefits for a nonparticipating provider, physical medicine and rehabilitation, William Cohen, MD.

Please understand that this determination is strictly based on your plan benefit limitation and is not a determination of medical necessity. ...

9. That, as the Court will see from the Administrative Record, Aetna at first asserted as it's ground for non-approval that the procedure PRFT was available from an in-network provider and for that reason an out-of-network provider would not be approved;

10. That Plaintiff then demonstrated conclusively that PRFT was not available “in-network”;

11. That Aetna, however, even though conclusively proven wrong, not only continued to and continues to arbitrarily and capriciously withhold its consent for the said medically reasonable and necessary PRFT leaving Plaintiff in severe pain, but even went to the point of misrepresenting that out-of-network coverage is not ever available under the Defendant Plan; and

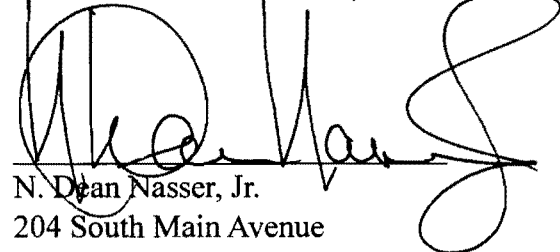
12. That the denial of treatment through the said arbitrary withholding of approval violates the Defendant Plan and ERISA and is, in the alternative, an abuse of discretion.

WHEREFORE, Plaintiff requests relief against Defendant Plan, as follows:

1. An order and judgment that Defendant Plan approve the requested benefits due and such other and further relief as Plaintiff proves himself entitled in the future; and
2. An award of attorneys' fees and costs of this action and such other and further relief as the Court deems appropriate and equitable, allowable, and just.

Dated this 3rd day of December 2012.

NASSER LAW OFFICES, P.C.



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